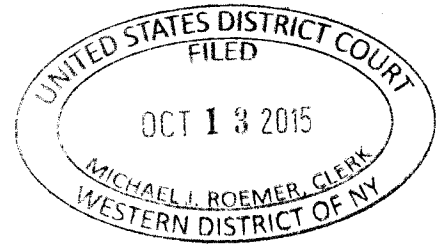


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

15-CR-6132 FPG

WILLIAM MARTIN, JR.,

Defendant.

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**PLEA AGREEMENT**

The defendant, WILLIAM MARTIN, JR., and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

**I. THE PLEA AND POSSIBLE SENTENCE**

1. The defendant agrees to waive indictment and to plead guilty to a one count Information which charges a violation of Title 18, United States Code, Section 2422(b) (coercion and enticement of a minor), for which the mandatory minimum term of imprisonment is 10 years and the maximum possible sentence is a term of imprisonment of life, a fine of \$250,000, and a term of supervised release of at least 5 years and up to life. The defendant understands that the penalties set forth in this paragraph are the minimum and maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 5 years, without credit for time previously served on supervised release and if the defendant commits any criminal offense under Chapter 109A, 110 or 117, or Sections 1201 or 1591 of Title 18, United States Code, for which imprisonment for a term longer than 1 year can be imposed, the defendant shall be sentenced to a term of imprisonment of not less than 5 years and up to life. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in Paragraph 1 of this agreement.

3. The defendant has been advised and understands that under the Sex Offender Registration and Notification Act, the defendant must register and keep registration current in all of the following jurisdictions: where the defendant resides; where the defendant is employed; and where the defendant is a student. The defendant understands the requirements for registration include providing the defendant's name, residence address, and the names and addresses of any places where the defendant is or will be an employee or student, among other information. The defendant further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which the defendant resides, is an employee, or is a student, not later than three (3) business days after, any change of the defendant's name, residence, employment, or student status. The

defendant has been advised and understands that failure to comply with these obligations subjects the defendant to prosecution for failure to register under federal law, Title 18, United States Code, Section 2250, which is punishable by imprisonment, a fine, or both.

## **II. ELEMENTS AND FACTUAL BASIS**

4. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

- a. The defendant knowingly used a facility or means of interstate commerce to persuade, induce, entice or coerce an individual under the age of eighteen (18) to engage in sexual activity;
- b. The defendant believed that such individual was less than eighteen (18) years of age; and
- c. The defendant could have been charged with a criminal offense for engaging in the specified sexual activity.

### **FACTUAL BASIS**

5. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

- a. Between August 2014 and February 7, 2015, in the Western District of New York, and elsewhere, the defendant, WILLIAM MARTIN, JR., who is approximately 28 years of age, knowingly used a means and facility of interstate commerce, specifically, the Internet and a smart phone, to knowingly persuade, induce, entice and coerce a female minor, under the age of 18, to engage in any sexual activity for which

any person could be charged. Specifically, the defendant, WILLIAM MARTIN, JR., engaged in sexually explicit chats with the female who was 14 years of age, using, among other means, the website Facebook.com, and persuaded and induced the minor to engage in sexual intercourse and oral sex with him. Sexual intercourse between a 28-year-old and a 14-year-old is chargeable as Rape in the Second Degree in the State of New York pursuant to New York State Penal Law § 130.30(1).

### **III. SENTENCING GUIDELINES**

6. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

#### **BASE OFFENSE LEVEL**

7. The government and the defendant agree that Guidelines § 2G1.3(a)(3) applies to the offense of conviction and provides for a base offense level of 28.

#### **SPECIFIC OFFENSE CHARACTERISTICS** **U.S.S.G. CHAPTER 2 ADJUSTMENTS**

8. The government and the defendant agree that the following specific offense characteristics do apply:

- a. The two-level increase pursuant to Guidelines § 2G1.3(b)(2)(B) (undue influence over minor);
- b. The two-level increase pursuant to Guidelines § 2G1.3(b)(3)(B) (offense involved use of a computer); and

- c. The two-level increase pursuant to Guidelines § 2G1.3(b)(4)(A) (offense involved commission of a sex act or sexual contact).

### **ADJUSTED OFFENSE LEVEL**

9. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 34.

### **ACCEPTANCE OF RESPONSIBILITY**

10. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility) and further agrees to move the Court to apply the additional one (1) level downward adjustment of Guidelines § 3E1.1(b), which would result in a total offense level of 31.

### **CRIMINAL HISTORY CATEGORY**

11. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the

defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

### **GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT**

12. It is the understanding of the government and the defendant that, with a total offense level of 31 and criminal history category of I, and taking into account the applicable mandatory statutory minimum penalties, the defendant's sentencing range would be a term of imprisonment of 120 to 135 months, a fine of \$15,000 to \$150,000, and a period of supervised release of 5 years to life. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the minimum and maximum penalties set forth in paragraph 1 of this agreement.

13. Notwithstanding the above calculations, it is the agreement of the parties pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that the Court at the time of sentence impose an 120 month term of imprisonment to run concurrent with any state sentence related to the defendant's conviction of Rape in the Second Degree referenced in paragraph 5(a) above. If, after reviewing the presentence report, the Court rejects this agreement, the defendant shall then be afforded the opportunity to withdraw the plea of guilty. This agreement does not affect the amount of a fine, the amount of restitution or the length and conditions of a term of supervised release that may be imposed by the Court at sentencing.

14. The defendant understands that, except as set forth in paragraph 13 above, the Court is not bound to accept any Sentencing Guidelines calculations set forth in this agreement and the defendant will not be entitled to withdraw the plea of guilty based on the sentence imposed by the Court.

#### **IV. STATUTE OF LIMITATIONS**

15. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to the enticement of a minor which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

#### **V. GOVERNMENT RIGHTS AND RESERVATIONS**

16. The defendant understands that the government has reserved the right to:
- a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

- b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;
- c. advocate for a specific sentence consistent with the terms of this agreement including the amount of restitution and/or a fine and the method of payment; and
- d. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information, including conduct and statements by the defendant subsequent to this agreement, regarding the recommendation or factor.

17. At sentencing, the government will move to dismiss the Criminal Complaint pending against the defendant under Magistrate's 15-MJ-558.

## VI. APPEAL RIGHTS

18. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal and collaterally attack any component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶¶ 12, 13 above, notwithstanding the manner in which the Court determines the sentence. In the event of an appeal of the defendant's sentence by the government, the defendant reserves the right to argue the correctness of the defendant's sentence.



19. The defendant understands that by agreeing not to collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

20. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶¶ 12, 13, above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

## **VII. TOTAL AGREEMENT AND AFFIRMATIONS**

21. This plea agreement represents the total agreement between the defendant, **WILLIAM MARTIN, JR.**, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

WILLIAM J. HOCHUL JR.  
United States Attorney  
Western District of New York


BY:


  
\_\_\_\_\_  
MELISSA M. MARANGOLA  
Assistant United States Attorney  
United States Attorney's Office  
100 State Street, Room 500  
Rochester, New York 14614  
(585) 399-3925

Dated: October 13, 2015

## ACKNOWLEDGMENT

I have read this agreement, which consists of 11 pages. I have had a full opportunity to discuss this agreement with my attorney, Anne Burger, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

  
\_\_\_\_\_  
WILLIAM MARTIN, JR.  
Defendant  
Dated: October 13, 2015

  
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ANNE BURGER, ESQ.  
Attorney for the Defendant  
Dated: October 13, 2015